

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CARMEN L. WHITTED

APPELLANT,

**v.
DIVISION OF EMPLOYMENT SECURITY**

RESPONDENT.

DOCKET NUMBER WD71407
DATE: March 30, 2010

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Joseph M. Ellis, Presiding Judge, Victor Howard and Gary D. Witt, Judges

Attorneys:

Carmen L. Whitted, Appellant Pro Se

Larry R. Ruhmann, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

DIVISION OF EMPLOYMENT SECURITY,

RESPONDENT.

No. WD71407

Labor and Industrial Relations Commission

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, Victor Howard and Gary D. Witt, Judges

Carmen L. Whitted was employed by CCMG, LLC as an apartment property manager for two and three quarter years when her employment was terminated on March 23, 2009. CCMG alleges that Whitted was terminated for "false records" and leaving the work premises without permission.

Whitted filed a request for unemployment benefits, and CCMG filed a Letter of Protest. A deputy with the Missouri Division of Employment Security determined that Whitted was disqualified because she was discharged for misconduct in connection with her work. That decision was appealed to an Appeals Tribunal of the Missouri Division of Employment Security. A telephone hearing was held, and the deputy's decision was affirmed. That decision was appealed to the Labor and Industrial Relations Commission, and the decision of the Appeals Tribunal was affirmed. This appeal followed.

REVERSED AND REMANDED.

Division Two holds:

While CCMG claims Whitted was terminated for "false forms," there was no evidence that any of the forms in question was false or misleading in any way. Whitted violated HUD rules and company policy by giving third party verification forms directly to the tenants to deliver to the third parties. However, she did so at the direction of her supervisor to expedite the processing of the forms. Under the facts of this case we cannot find that Whitted's compliance with the directives of her supervisor constitute misconduct precluding her from receiving benefits under the Act.

The second allegation of misconduct by Whitted is a violation of CCMG's attendance policy. In this case the Commission found that Whitted left work forty minutes early on one occasion. While the violation of an attendance policy may be grounds to terminate an employee, such a violation standing alone does not rise to the level of misconduct such that the employee should be denied unemployment benefits.

CCMG failed to meet its burden of establishing that the Whitted was discharged for misconduct. The award of the Commission is reversed and the cause remanded to the Commission.

Opinion by: Gary D. Witt, Judge

March 30, 2010

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